HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

ARBITRATION APPEAL NO.	**45/2019**
Parties Name	THE STATE OF MADHYA PRADESH AND OTHERS VS. M/S MODERN BUILDERS
Bench Constituted	Single Bench
Judgment delivered By	**HON'BLE SHRI JUSTICE VISHAL DHAGAT**
Whether approved for reporting	**YES/NO**
Name of counsel for parties	**For petitioner**: Ms. Gulab Kali Patel, Govt. Advocate. **For Respondent :** Shri Navneesh Jauhari, Advocate
Law laid down	
Significant paragraph number	

(O R D E R)
05/07/2021

Appellant have filed this Arbitration Appeal challenging order dated 5.3.2019 passed by 13th Additional District Judge, Jabalpur, rejecting his application under section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996').

2. Appeal is filed by appellants on ground that there is patent illegality committed by Additional District Judge in not holding that sole arbitrator passed award for want of jurisdiction. Agreement between parties was a work contract, therefore, claim ought to have been filed by respondent before Arbitration Tribunal under Section 2(7) of M.P. Madhyastham Adhikaran Adhiniyam, 1983.

3. It is submitted by learned Govt. Advocate for appellants that order passed by Additional District Judge is contrary to judgment passed by Apex Court reported in the case of **Madhya Pradesh Rural Road Development Authority and Another vs. L. G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826**. It is further submitted that plea of jurisdiction is purely a legal question and can be raised at any stage or when award is challenged under section 34 of the Act of 1996. In support of the said argument, learned Govt. Advocate has relied on judgment reported in **Lion Engineering Consultants vs. State of M.P. and others (2018) 16 SCC 758** and submits that there is no bar to raise plea of jurisdiction by way of objection under section 34 of the Act of 1996. It is also submitted that award is against public policy as same has been passed contrary to law.

4. Learned counsel for the respondent supported the order passed by Additional District Judge, Jabalpur. It is submitted that appellants have not raised any objection regarding jurisdiction in its reply filed before sole Arbitrator in arbitral proceedings. It is submitted by him that as per Section 16(2) of the Act of 1996, objection was not raised at the time of filing of written statement, therefore, now appellants are barred from raising objection of jurisdiction of sole

Arbitrator. In view of the same, he made a prayer for dismissal of Arbitration Appeal.

5. Heard the learned counsel for the parties.

6. Apex Court in the case of **M.P. Rural Road Development Authority and Another vs. L. G. Chaudhary Engineers and Contractors** (2018) 10 SCC 826, has over-ruled judgment in **Va Tech Escher Wyass Flovel Limited vs. Madhya Pradesh State Electricity Board and Another**, **(2011) 13 SCC 261**. It was held that even if work contract between parties itself is terminated, State Act i.e. M.P. Madhyastham Adhikaran Adhiniyam, 1983, will cover a dispute in view of Section 2(4) of said Act. Relying on judgment in the case of **M.P. Rural Road Development Authority and Another vs. L. G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495**, it was further held that arbitration proceedings may go on under M.P. Madhyastham Adhikaran Adhiniyam, 1983 and not under Arbitration and Conciliation Act, 1996. Apex Court further held that State law will prevail in terms of Section 2(4) of Central Act. Reference under State Law is valid and could be decided in accordance with State Act and proceedings before the Tribunal was restored. Proceedings which were pending before Arbitrator was transferred to State Tribunal.

7. Section 16(2) of Arbitration and Conciliation Act, 1996 reads as under:-

> "A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator."

8. From perusal of para-7 of award which has been passed by sole Arbitrator, it has specifically been mentioned that respondent has raised a plea in their written statement and counter claim that claimant had not referred the dispute under Clause 29 to the Arbitration Board to be constituted by the State Government, therefore, claim is liable to be dismissed as Arbitrator has no jurisdiction to entertain the present claim.

9. Considering the said paragraph of award, it is clear that respondent has raised an objection regarding jurisdiction of sole Arbitrator to entertain the claim. Dispute ought to have been referred to Arbitration Board as per Clause 29.

10. In the case of **Lion Engineering Consultants** (2018) 10 SCC 826, Apex Court held that there is no bar to raise plea of jurisdiction by way of an objection under section 34 of the Act of 1996, even if no such objection was raised

under section 16 of the Act of 1996. Respondents were given liberty in said case to argue before the trial court its objections that Act of 1996 stood excluded by M.P. Madhyastham Adhikaran Adhiniyam, 1983. It was also held that question of jurisdiction is purely a legal issue and, therefore, same can be raised even without formal pleading.

11. In this case appellants have raised question of jurisdiction in their written statement before sole Arbitrator and have further agitated the issue before Additional District Judge, Jabalpur. In view of the judgment passed by the Apex Court in the case of **L. G. Chaudhary Engineers and Contractors** (supra), M.P. Madhyastham Adhikaran Adhiniyam, 1983 is applicable and, therefore, sole Arbitrator does not have jurisdiction to consider the claim filed by respondent under Arbitration and Conciliation Act, 1996.

12. Though appellants have not raised the plea of want of jurisdiction of sole Arbitrator in application filed before Additional District Judge under Section 34 of the Act of 1996, but as the question of jurisdiction is a pure question of law, therefore, it can be raised at appellate stage also.

13. In view of the above, appellants succeed in their appeal. Orders passed by sole Arbitrator in Arbitration Case No.51/2010 dated 25.4.2014 and by Additional District

Judge, Jabalpur under Section 34(1) of the Act of 1996, in MJC No.247/2014 dated 5.3.2019, are hereby quashed.

14. The appeal, filed by the appellants, stands **allowed**.

(VISHAL DHAGAT)
JUDGE

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